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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/973,185	10/10/2001	Glenn H. Weissman	58049-017	4487
7590	01/05/2004		EXAMINER	
MCDERMOTT, WILL & EMERY 600 13th Street, N.W. Washington, DC 20005-3096			WARE, DEBORAH K	
			ART UNIT	PAPER NUMBER
			1651	

DATE MAILED: 01/05/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

9M

Office Action Summary

Application No.	Applicant(s)	
09/973,185	WEISSMAN, GLENN H.	
Examiner	Art Unit	
Deborah K. Ware	1651	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 28 July 2003.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 22-30 is/are pending in the application.
- 4a) Of the above claim(s) 22 is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 23-30 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) All b) Some * c) None of:
1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. _____.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 13) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
a) The translation of the foreign language provisional application has been received.
- 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) Notice of References Cited (PTO-892) 4) Interview Summary (PTO-413) Paper No(s). _____.
2) Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) Notice of Informal Patent Application (PTO-152)
3) Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____. 6) Other: _____

DETAILED ACTION

Claims 22-30 are pending.

MISCELLANEOUS PAPERS

The amendment(s) filed July 28, 2003 and August 13, 2003, have been received and entered. Claims 1-21 have been canceled. The extension of time filed therewith is also noted. It is noted that those papers filed August 13, 2003, are duplicates of those filed July 28, 2003.

INFORMATION DISCLOSURE STATEMENTS

The IDSs filed therewith have been received and references have been considered as indicated on enclosed PTO-1449 Form(s).

Election/Restrictions

Claim 22 is withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement on January 13, 2003.

Examination

Claims 23-30 are considered on the merits.

Claim Objections

Claim 30 is objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. It is uncertain that other

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ingredients as listed in claim 30 are being added in addition to those already set forth in claims 28-29. The claims are limited in scope by the phraseology of "consisting of" wherein no additional ingredients may be added, only those ingredients may be incorporated into claim 30 of which are already present in claims 28-29. Amendments and/or clarification is/are requested.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim Rejections - 35 USC § 103

Claims 23-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over newly cited Hunter et al in view of Reichert, Chen, Mitchell, Stillman, and WO 00/25588.

Claims and Chen, Mitchell, Stillman and WO 00/25588 are cited and discussed of record.

Hunter et al teach (see col. 4, all lines) compositions, comprising beta glucan and glycerin, as well as surfactants, preservatives, etc.

Reichert teaches compositions containing antibacterial agents and surfactants, and polysorbate 80, etc., see abstract and col. 3, lines 60-65.

Claims mainly differ from Hunter in that oat beta glucan is not disclosed.

It would have been obvious to one of ordinary skill in the art at the time the claimed invention was filed to combine the ingredients as disclosed by each of Hunter et al, Reichert, Chen, Mitchell, Stillman and WO 00/25588 and further to select the plant beta glucan of Hunter to be the oat beta glucan as disclosed by Stillman. Each of the ingredients as claimed are disclosed by the cited prior art to be useful in compositions,

and compositions for snoring as taught by Reichert. To combine well known ingredients is obvious over the cited prior art. The amounts are clearly within the ranges disclosed by Hunter et al. One of skill in the art would have been motivated to combine these ingredients in the amounts as disclosed by Hunter et al. One of skill would have clearly expected successful results. The claims are *prima facie* obvious over the newly applied art rejection.

All claims fail to be patentably distinguishable over the state of the art discussed above and cited on the enclosed PTO-892 and/or PTO-1449. Therefore, the claims are properly rejected.

The remaining references listed on the enclosed PTO-892 and/or PTO-1449 are cited to further show the state of the art.

No claims are allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Deborah K. Ware whose telephone number is 308-4245. The examiner can normally be reached on 9:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mike Wityshyn can be reached on 308-4743. The fax phone number for the organization where this application or proceeding is assigned is 305-3592.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 308-0196.

Deborah K. Ware

DEBORAH K. WARE
PATENT EXAMINER

Deborah K. Ware
December 27, 2003